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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/053,369      | 11/02/2001  | Todd H. Steinberg    | 2001P19662US        | 2875             |

7590 07/08/2003

Siemens Corporation  
Attn: Elsa Keller, Legal Administrator  
Intellectual Property Department  
186 Wood Avenue South  
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[REDACTED] EXAMINER

PATEL, HARSHAD R

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2855

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                    |
|------------------------------|-----------------|--------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)       |
|                              | 10/053,369      | STEINBERG, TODD H. |
| Examiner                     | Art Unit        |                    |
| Harshad Patel                | 2855            |                    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 May 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

|  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

*Drawings*

1. The drawings are objected to because in Fig. 11, numeral 501n is not described in the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the portal imaging device deployed between a patient and a radiation source must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Specification*

3. The disclosure is objected to because of the following informalities: At pages 1 and 6, lines 7 and 21, respectively, Sr. No. of the co-pending application is missing. At page 6, line 29, "ad" should be changed to --and--. As mentioned at page 13, lines 26 and 27, numerals 304a, and 304b are not labeled in Fig. 9. At page 13, line 30, numeral "305A" should be --305a--. As mentioned at page 14, line 5, numeral "306" is not labeled in Fig. 9. On page 14, numeral "305A", "501A" and "502A" should be labeled as --305a--, --501a-- and 502a-- respectively. At page 14, line 18 numeral 501A is not referred as a pin in Fig. 11. Appropriate correction is required.

***112 Rejections***

4. Claims 8, 11, 12, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8, 12 and 16, it is unclear as to how the electronic portal imaging device is positioned between a patient and the radiation source while being deployed below the patient plane.

Claims 11 and 15, it is unclear as to how the imaging panel is positioned above the patient plane.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 5, 6, 9, 10, 13, 14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalend et al. (5,784,431) (hereinafter Kalend).

Kalend teaches an apparatus and a method of commissioning and a linear accelerator for providing a radiation to a body comprising an electronic portal imaging device coupled to the accelerometer and deployed in a patient plane, where in the electronic portal imaging device is adapted for use in dosimetry application during therapy (Fig. 1, & col. 14 lines 37-43).

7. Claims 1, 2, 5, 6, 9, 10, 13, 14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes (5,754,622).

Hughes teaches a linear accelerator including an electronic portal imaging device (90) positioned in plane of a patient for use in dosimetry application during therapy.

*Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 4, 7, 8, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalend or Hughes in view of Barnea (5,233,990).

Kalend and Hughes both show all the features of the instant invention except for positioning the imaging system between the source and the patient. Barnea, in the same field of endeavor, teaches the use of the imaging device (26) between the patient and the source. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to place an imaging device as claimed since providing the imaging device as such would provide verification of a correct position of a patient during treatment.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mackie et al. (6,345,114) teach a method and apparatus of radiation therapy equipment using an electronic portal device.

Art Unit: 2855

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harshad Patel whose telephone number is (703) 305-4935. The examiner can normally be reached on Monday-Thursday (7:00 AM-5:30 PM).



*Harshad Patel*  
*Primary Examiner*  
*Art Unit 2855*

hp  
June 26, 2003